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AVIATION SECURITY, LLC; COVENANT
AVIATION SECURITY CORPORATION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FAYLIN PARKER-REBISZ,

Plaintiff,

v.

COVENANT AVIATION SECURITY, LLC;
COVENANT AVIATION SECURITY
CORPORATION; and DOES 1-20,
inclusive,

Defendants.

CASE NO. 3:14-cv-04106-TEH

**DEFENDANTS COVENANT AVIATION
SECURITY, LLC AND COVENANT
AVIATION SECURITY CORPORATION'S
FIRST AMENDED ANSWER TO
PLAINTIFF'S COMPLAINT**

Judge: Hon. Thelton E. Henderson

Defendants COVENANT AVIATION SECURITY, LLC ("CAS LLC") and
COVENANT AVIATION SECURITY CORPORATION ("CAS Corp.") (collectively,
"Defendants"), by their attorneys Hanson Bridgett LLP, hereby submit this First Amended
Answer to Plaintiff FAYLIN PARKER-REBISZ's ("Plaintiff") Complaint ("Complaint"), and
state as follows:

1 **I. INTRODUCTION**

2 1. Answering Defendants admit that Plaintiff has brought this action against it in
3 connection with claims allegedly arising out of her employment with CAS LLC.

4 Answering Defendants deny all allegations of paragraph 1 not specifically admitted.

5 2. Answering Defendants admit this is an action for alleged damages under the
6 laws and legal theories stated in paragraph 2. Answering Defendants deny that Plaintiff
7 is entitled to any damages, and they deny all allegations of paragraph 2 not specifically
8 admitted.

9 **PARTIES**

10 3. Admitted.

11 4. Answering Defendants admit that CAS LLC is a limited liability company doing
12 business in San Mateo County. Answering Defendants deny that CAS LLC is a
13 corporation, and they deny all allegations of paragraph 4 not specifically admitted.

14 5. Answering Defendants admit that CAS Corp. is a corporation. They deny that
15 CAS Corp. is doing business in San Mateo County, and they deny all allegations of
16 paragraph 5 not specifically admitted.

17 6. Answering Defendants lack knowledge or information sufficient to form a belief
18 of the truth of the allegations of paragraph 6.

19 7. Denied.

20 **JURISDICTION AND VENUE**

21 8. Admitted.

22 9. Answering Defendants admit that Plaintiff filed a Complaint with the California
23 Department of Fair Employment and Housing. Answering Defendants deny all
24 allegations of paragraph 9 not specifically admitted.

25 10. Admitted.

26 11. Answering Defendants lack knowledge or information sufficient to form a
27 belief as to the truth of the allegations of paragraph 11.

28 ///

FACTUAL ALLEGATIONS

12. Answering Defendants admit that Plaintiff was hired by CAS LLC as an Airport Security Officer. Answering Defendants deny all allegations of paragraph 12 not specifically admitted.

13. Answering Defendants admit that Plaintiff worked for CAS LLC for approximately four years. Answering Defendants deny all allegations of paragraph 13 not specifically admitted.

14. Denied.

15. Denied.

16. Answering Defendants admit that Plaintiff regularly worked a ten-hour/four-day schedule as provided in the applicable collective bargaining agreement and as authorized by law. Answering Defendants deny that any statutory overtime was due, and they deny all allegations of paragraph 16 not specifically admitted.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Answering Defendants admit that Plaintiff commenced intermittent leave in 2012. Answering Defendants deny all allegations of paragraph 23 not specifically admitted.

24. Admitted.

25. Answering Defendants admit that in March 2013 Plaintiff requested to increase the frequency and modify other terms of her leave and that they requested additional information to support the request. Answering Defendants deny all allegations of paragraph 25 not specifically admitted.

26. Answering Defendants admit that Plaintiff submitted additional information

1 completed by her treating doctor on or about May 6, 2013. They deny that Plaintiff
2 provided the information that had been requested, and they deny all allegations of
3 paragraph 26 not specifically admitted.

4 27. Admitted.

5 28. Answering Defendants admit that Plaintiff's doctor submitted additional
6 information. They deny that the doctor submitted the information that had been
7 requested, and they deny all allegations of paragraph 26 not specifically admitted.

8 29. Answering Defendants admit that CAS LLC requested additional information
9 because neither Plaintiff nor her doctor had submitted the information previously
10 requested. Answering Defendants deny all allegations of paragraph 29 not specifically
11 admitted.

12 30. Denied.

13 31. Answering Defendants lack knowledge or information sufficient to form a
14 belief as to the truth of the allegations of paragraph 31.

15 32. Denied.

16 33. Answering Defendants admit that on and after August 6, 2013 CAS LLC made
17 repeated efforts to contact Plaintiff via mail, fax, phone, and email regarding the need to
18 provide information to request for full time disability leave. Answering Defendants deny
19 all allegations of paragraph 33 not specifically admitted.

20 34. Answering Defendants admit that Plaintiff requested forms and that CAS LLC
21 sent them. Answering Defendants deny all allegations of paragraph 34 not specifically
22 admitted.

23 35. Denied.

24 36. Answering Defendants lack knowledge or information sufficient to form a
25 belief as to the truth of the allegations of paragraph 36.

26 37. Answering Defendants admit that on September 12, 2013, CAS LLC sent a
27 letter informing Plaintiff that her employment would be terminated if she did not comply
28 with the multiple previous requests for information. Answering Defendants deny all

1 allegations of paragraph 37 not specifically admitted.

2 38. Answering Defendants lack knowledge or information sufficient to form a
3 belief as to the truth of the allegations of paragraph 38.

4 39. Answering Defendants knowledge or information sufficient to form a belief as
5 to the truth of the allegations of paragraph 39.

6 40. Answering Defendants lack knowledge or information sufficient to form a
7 belief as to the truth of the allegations of paragraph 40.

8 41. Answering Defendants admit that Plaintiff submitted a state of Wyoming ADA
9 intake from which was not the proper form and did not contain the information necessary
10 to support Plaintiff's request. Answering Defendants deny all allegations of paragraph 41
11 not specifically admitted.

12 42. Answering Defendants admit that CAS LLC informed Plaintiff that she had
13 submitted an improper form that did not contain the required information. Answering
14 Defendants deny all allegations of paragraph 42 not specifically admitted.

15 43. Answering Defendants admit that CAS LLC terminated Plaintiff's employment
16 on or about September 18, 2013 due to her repeated failure to supply information needed
17 to support her requested leave. Answering Defendants deny all allegations of paragraph
18 43 not specifically admitted.

19 44. Answering Defendants admit that CASS, LLC did not receive the information it
20 had requested. Answering Defendants deny all allegations of paragraph 44 not
21 specifically admitted.

22 45. Denied.

23 46. Denied.

24 47. Denied.

25 **FIRST CAUSE OF ACTION**

26 Alleged Disability Discrimination
Cal. Gov. Code § 12940 *et seq.*

27 48. Answering Defendants incorporate by reference their responses to all
28 previous allegations.

1 49. Denied.

2 50. Denied.

3 51. Denied.

4 52. Denied.

5 53. Denied.

6 54. Denied.

7 55. Denied.

8 **SECOND CAUSE OF ACTION**

Alleged Failure to Accommodate – FEHA
Cal. Gov. Code § 12940 *et seq.*
(Against All Defendants)

10
11 56. Answering Defendants incorporate by reference their responses to all
12 previous allegations.

13 57. Denied.

14 58. Denied.

15 59. Denied.

16 60. Denied.

17 61. Denied.

18 62. Denied.

19 63. Denied.

20 64. Denied.

21 **THIRD CAUSE OF ACTION**

Alleged Failure to Engage in Interactive Process – FEHA
Cal. Gov. Code § 12940 *et seq.*
(Against All Defendants)

22
23
24 65. Answering Defendants incorporate by reference their responses to all previous
25 allegations.

26 66. Denied.

27 67. Denied.

28 68. Denied.

1 69. Denied.

2 70. Denied.

3 71. Denied.

4 72. Denied.

5 73. Denied.

6 **FOURTH CAUSE OF ACTION**

7 Alleged Violation of California Family Rights Act ("CFRA") – Interference
8 (Against All Defendants)

9 74. Answering Defendants incorporate by reference their responses to all
10 previous allegations.

11 75. Admitted.

12 76. Admitted with respect to CAS LLC. Denied with respect to CAS Corp.

13 77. Answering Defendants neither admit not deny the allegations of paragraph 77
14 for the reason that such allegations are legal conclusions to which no answer is required.
15 To the extent an answer is required, answering Defendants deny the allegations of
16 paragraph 77.

17 78. Answering Defendants neither admit not deny the allegations of paragraph 78
18 for the reason that such allegations are legal conclusions to which no answer is required.
19 To the extent an answer is required, answering Defendants deny the allegations of
20 paragraph 78.

21 79. Answering Defendants neither admit not deny the allegations of paragraph 79
22 for the reason that such allegations are legal conclusions to which no answer is required.
23 To the extent an answer is required, answering Defendants deny the allegations of
24 paragraph 79.

25 80. Answering Defendants neither admit not deny the allegations of paragraph 80
26 for the reason that such allegations are legal conclusions to which no answer is required.
27 To the extent an answer is required, answering Defendants deny the allegations of
28 paragraph 80.

1 81. Answering Defendants neither admit not deny the allegations of paragraph 81
2 for the reason that such allegations are legal conclusions to which no answer is required.
3 To the extent an answer is required, answering Defendants deny the allegations of
4 paragraph 81.

5 82. Denied.

6 83. Denied.

7 84. Denied.

8 85. Denied.

9 86. Denied.

10 **FIFTH CAUSE OF ACTION**

11 Alleged Violation of CFRA – Retaliation
(Against All Defendants)

12 87. Answering Defendants incorporate by reference their responses to previous
13 allegations.

14 88. Answering Defendants neither admit not deny the allegations of paragraph 88
15 for the reason that such allegations are legal conclusions to which no answer is required.
16 To the extent an answer is required, answering Defendants deny the allegations of
17 paragraph 88.

18 89. Answering Defendants neither admit not deny the allegations of paragraph 89
19 for the reason that such allegations are legal conclusions to which no answer is required.
20 To the extent an answer is required, answering Defendants deny the allegations of
21 paragraph 89.

22 90. Answering Defendants neither admit not deny the allegations of paragraph 90
23 for the reason that such allegations are legal conclusions to which no answer is required.
24 To the extent an answer is required, answering Defendants deny the allegations of
25 paragraph 90.

26 91. Answering Defendants neither admit not deny the allegations of paragraph 91
27 for the reason that such allegations are legal conclusions to which no answer is required.
28 To the extent an answer is required, answering Defendants deny the allegations of

1 paragraph 91.

2 92. Answering Defendants neither admit nor deny the allegations of paragraph 92
3 for the reason that such allegations are legal conclusions to which no answer is required.
4 To the extent an answer is required, answering Defendants deny the allegations of
5 paragraph 92 .

6 93. Denied.

7 94. Denied.

8 95. Denied.

9 96. Denied.

10 **SIXTH CAUSE OF ACTION**

11 Alleged FEHA Retaliation – Cal. Gov. Code § 12945.1 *et seq.*

12 97. Answering Defendants incorporate by reference their responses to all
13 previous allegations.

14 98. Admitted.

15 99. Denied.

16 100. Denied.

17 101. Denied.

18 102. Denied.

19 **SEVENTH CAUSE OF ACTION**

20 Alleged Wrongful Termination in Violation of Public Policy
(Against All Defendants)

21 103. Answering Defendants incorporate by reference their responses to all
22 previous allegations.

23 104. Denied.

24 105. Denied.

25 106. Denied.

26 107. Denied.

27 ///

28 ///

EIGHTH CAUSE OF ACTION

Alleged Failure to Pay Overtime Earned for Hours Worked In
Alleged Violation of Labor Code §§ 510 and 1194, IWC Wage Orders and FLSA
(Against All Defendants)

108. Answering Defendants incorporate by reference their responses to all previous allegations.

109. Answering Defendants neither admit not deny the allegations of paragraph 77 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 77.

110. Answering Defendants neither admit not deny the allegations of paragraph 110 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 110.

111. Answering Defendants neither admit not deny the allegations of paragraph 111 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 111.

112. Answering Defendants admit that Plaintiff regularly worked a ten-hour/four-day schedule as provided in the applicable collective bargaining agreement and as authorized by law. Answering Defendants deny that any statutory overtime was due, and they deny all allegations of paragraph 112 not specifically admitted.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

NINTH CAUSE OF ACTION

Allegedly Unpaid "Straight" Wages
(Against All Defendants)

117. Answering Defendants incorporate by reference their responses to all

1 previous allegations.

2 118. Answering Defendants neither admit not deny the allegations of paragraph
3 118 for the reason that such allegations are legal conclusions to which no answer is
4 required. To the extent an answer is required, answering Defendants deny the
5 allegations of paragraph 118.

6 119. Answering Defendants neither admit not deny the allegations of paragraph
7 119 for the reason that such allegations are legal conclusions to which no answer is
8 required. To the extent an answer is required, answering Defendants deny the
9 allegations of paragraph 119.

10 120. Denied.

11 121. Denied.

12 122. Denied.

13 123. Denied.

14 **TENTH CAUSE OF ACTION**

15 Alleged Liquidated Damages – Labor Code § 1194.2 and FLSA
(Against All Defendants)

16 124. Answering Defendants incorporate by reference their responses to all
17 previous allegations.

18 125. Denied.

19 126. Denied.

20 **ELEVENTH CAUSE OF ACTION**

21 Alleged Failure to Provide Meal and Rest Breaks in Violation of Code
(Against All Defendants)

22 127. Answering Defendants incorporate by reference their responses to all
23 previous allegations.

24 128. Answering Defendants neither admit not deny the allegations of paragraph
25 128 for the reason that such allegations are legal conclusions to which no answer is
26 required. To the extent an answer is required, answering Defendants deny the
27 allegations of paragraph 128.

28 129. Answering Defendants neither admit not deny the allegations of paragraph

1 129 for the reason that such allegations are legal conclusions to which no answer is
2 required. To the extent an answer is required, answering Defendants deny the
3 allegations of paragraph 129.

4 130. Answering Defendants neither admit not deny the allegations of paragraph
5 130 for the reason that such allegations are legal conclusions to which no answer is
6 required. To the extent an answer is required, answering Defendants deny the
7 allegations of paragraph 130.

8 131. Answering Defendants neither admit not deny the allegations of paragraph
9 131 for the reason that such allegations are legal conclusions to which no answer is
10 required. To the extent an answer is required, answering Defendants deny the
11 allegations of paragraph 131.

12 132. Denied.

13 133. Denied.

14 134. Denied.

15 135. Denied.

16 136. Denied.

17 **TWELFTH CAUSE OF ACTION**

18 Alleged Waiting Time Penalties – Labor Code § 203
(Against All Defendants)

19 137. Answering Defendants incorporate by reference their responses to all
20 previous allegations.

21 138. Answering Defendants neither admit not deny the allegations of paragraph
22 138 for the reason that such allegations are legal conclusions to which no answer is
23 required. To the extent an answer is required, answering Defendants deny the
24 allegations of paragraph 139.

25 139. Denied.

26 140. Denied.

27 141. Denied.

28 142. Denied.

THIRTEENTH CAUSE OF ACTION

Alleged Violation of Labor Code §§ 204 and 210
(Against All Defendants)

143. Answering Defendants incorporate by reference their responses to all previous allegations.

144. Answering Defendants neither admit nor deny the allegations of paragraph 144 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 144.

145. Denied.

146. Answering Defendants neither admit nor deny the allegations of paragraph 146 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 146.

147. Denied.

FOURTEENTH CAUSE OF ACTION

Alleged Failure to Provide Accurate Wage Statement – CA Labor Code § 226(e)
(Against All Defendants)

148. Answering Defendants incorporate by reference their responses to all previous allegations.

149. Answering Defendants neither admit nor deny the allegations of paragraph 149 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 149.

150. Answering Defendants neither admit nor deny the allegations of paragraph 150 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 150.

151. Answering Defendants neither admit nor deny the allegations of paragraph 151 for the reason that such allegations are legal conclusions to which no answer is

1 required. To the extent an answer is required, answering Defendants deny the
2 allegations of paragraph 151.

3 152. Denied.

4 153. Denied.

5 154. Denied.

6 **FIFTEENTH CAUSE OF ACTION**
7 Alleged Civil Penalties Under Labor Code § 558

8 155. Answering Defendants incorporate by reference their responses to all
9 previous allegations.

10 156. Answering Defendants neither admit nor deny the allegations of paragraph
11 156 for the reason that such allegations are legal conclusions to which no answer is
12 required. To the extent an answer is required, answering Defendants deny the
13 allegations of paragraph 156.

14 157. Answering Defendants neither admit nor deny the allegations of paragraph
15 157 for the reason that such allegations are legal conclusions to which no answer is
16 required. To the extent an answer is required, answering Defendants deny the
17 allegations of paragraph 157.

18 158. Denied.

19 159. Denied.

20 **SIXTEENTH CAUSE OF ACTION**

21 Allegedly Negligent Training
(Against All Defendants)

22 160. Answering Defendants incorporate by reference their responses to all
23 previous allegations.

24 161. Denied.

25 162. Denied.

26 163. Denied.

27 ///

28 ///

SEVENTEENTH CAUSE OF ACTION

Allegedly Unfair Business Practices – B&P Code §§ 17200 and 17203, *et seq.*
(Against All Defendants)

164. Answering Defendants incorporate their responses to all previous allegations.

165. Answering Defendants neither admit nor deny the allegations of paragraph 16 for the reason that such allegations are legal conclusions to which no answer is required. To the extent an answer is required, answering Defendants deny the allegations of paragraph 77.

171. Denied.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

EIGHTEENTH CAUSE OF ACTION

Labor Code Private Attorneys General Act ("PAGA") – Labor Code § 2698, *et seq.*
(Against All Defendants)

181. Answering Defendants incorporate by reference their responses to all previous allegations.

182. Denied.

183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

1 **AFFIRMATIVE DEFENSES**

2 Defendants hereby assert the following separate affirmative defenses to Plaintiff's
3 Complaint:

4 **FIRST AFFIRMATIVE DEFENSE**

5 Neither Plaintiff's Complaint nor any purported cause of action alleged therein
6 states facts sufficient to constitute a cause of action against Defendants upon which relief
7 can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's causes of action are barred, in whole or in part, to the extent she alleges
10 actions barred by the applicable statutes of limitation, including without limitation
11 California Government Code Sections 12960 and 12965(b); California Code of Civil
12 Procedure Sections 335, 337, 338, 339, 340, 340.5, 343, and 474; and California
13 Business and Professions Code Section 17208.

14 **THIRD AFFIRMATIVE DEFENSE**

15 To the extent that any of Plaintiff's Causes of Action state a claim under the
16 California Fair Employment and Housing Act, California Government Code section 12940
17 *et seq.* ("FEHA"), those causes of action cannot be maintained to the extent that Plaintiff
18 has failed to fulfill the statutory prerequisites to suit, including properly and timely
19 exhausting her administrative remedies.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 To the extent that any of Plaintiff's Causes of Action state a claim under the FEHA
22 that exceed the scope of her administrative charge filed with the Department of Fair
23 Employment and Housing, if any, such cause or causes of action are barred by Plaintiff's
24 failure to exhaust her administrative remedies.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 Plaintiff's causes of action are barred, in whole or in part, to the extent Plaintiff was
27 not a qualified individual with a disability.

28 ///

1 **FIFTH AFFIRMATIVE DEFENSE**

2 Plaintiff's causes of action are barred, in whole or in part, to the extent that
3 accommodations required or requested by Plaintiff, if any, were unreasonable and would
4 have imposed an undue hardship on the operation of Defendants' business.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 Plaintiff's causes of action are barred, in whole or in part, to the extent that Plaintiff
7 was unable, even with reasonable accommodation, to perform the essential functions of
8 the position she held in a manner that would not endanger her health or safety, or the
9 health or safety of others.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's causes of action are barred, in whole or in part, under the avoidable
12 consequences doctrine to the extent that Plaintiff unreasonably failed to use the
13 complaint procedure or any other preventative and corrective measures that Defendants
14 provided its employees to prevent and correct workplace discrimination and/or retaliation,
15 which would have prevented any alleged harm.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 Plaintiff's causes of action are barred, in whole or in part, to the extent that Plaintiff
18 unreasonably failed to exhaust Defendants' internal remedies with respect to complaints,
19 if any, Plaintiff had regarding practices of Defendants.

20 **NINTH AFFIRMATIVE DEFENSE**

21 Plaintiff's causes of action are barred, in whole or in part, because Defendants'
22 actions were justified by legitimate business reasons, and Defendants would have made
23 the same employment decisions concerning Plaintiff absent any discriminatory or
24 retaliatory motive.

25 **TENTH AFFIRMATIVE DEFENSE**

26 Plaintiff's causes of action are barred, in whole or in part, because Defendants
27 took the complained-of employment actions for legitimate, non-discriminatory and/or non-
28 retaliatory, business reasons.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, because Defendant provided and Plaintiff received all rights to which she was entitled under the California Family Rights Act.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, to the extent she consented and/or acquiesced to or approved of the alleged conduct, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, because if Plaintiff suffered any damages at all, no alleged act or omission by Defendants were the actual or proximate cause of said damages to Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, because Defendants cannot be held liable for the conduct of any employee that falls outside the course and scope of that employee's employment.

FIFTEENTH AFFIRMATIVE DEFENSE

Any emotional distress allegedly suffered by Plaintiff is not attributable to Defendants or any conduct for which Defendants would be liable.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the equitable doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the equitable doctrines of waiver and/or estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the doctrine of after-acquired evidence.

///

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's causes of action are barred, in whole or in part, by the doctrine of
3 unclean hands.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 Plaintiff's causes of action are barred, in whole or in part, to the extent that Plaintiff
6 has failed to make reasonable efforts to mitigate her damages, if any.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 Plaintiff's causes of action are barred, in whole or in part, to the extent that
9 Plaintiff's Complaint alleges injuries subject to recovery under California Labor Code
10 Section 3706, because Defendants have satisfied the conditions of that section, and the
11 causes of action are therefore barred by the exclusive remedial provisions of California
12 Labor Code Section 3600.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 To the extent Plaintiff seeks to recover waiting time and/or other statutory
15 penalties, Plaintiff's causes of actions are barred, in whole or in part, because even
16 assuming *arguendo* that Plaintiff is entitled to additional compensation, Defendants did
17 not "willfully" or "intentionally" fail to pay any such additional compensation to Plaintiff.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 To the extent Plaintiff seeks to recover waiting time and/or other statutory
20 penalties, Defendants allege that the Complaint fails to state a claim for penalties under
21 California Labor Code Section 203 in that there is a good faith dispute as to Defendants'
22 obligation to pay wages as alleged in the Complaint.

23 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24 Plaintiff's causes of action are barred and/or offset, in whole or in part, to the to the
25 extent that Plaintiff has received premium pay for any on-duty meal periods or any
26 payments under Labor Code § 226.7.

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

28 Plaintiff's causes of action are barred, in whole or in part, because to the extent

1 Plaintiff did not take a meal period during her employment on a day on which she was
 2 entitled to a thirty-minute duty-free meal period, it was due to her voluntary choice, and
 3 not to any policy or practice by Defendants that prohibited or restricted her ability to take
 4 meal periods. *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, 53 Cal.4th 1004
 5 (2012).

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiff's causes of action are barred, in whole or in part, to the extent that the
 8 nature of the work prevented Plaintiff from taking any off-duty meal periods during the
 9 relevant time periods. 8 Cal. Code Regs. 11150(11)(A).

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's causes of action are barred, in whole or in part, to the extent that Plaintiff
 12 voluntarily waived her periods, including for workdays in which she worked six hours or
 13 less.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 Plaintiff's causes of action are barred, in whole or in part, because Plaintiff was
 16 authorized and permitted to take ten minute paid, uninterrupted rest periods for every four
 17 hours of work, and to the extent Plaintiff did not take a ten minute paid, uninterrupted rest
 18 period for any four hour period that she worked for Defendants, it was due to her
 19 voluntary choice, and not to any policy or practice by Defendants that prohibited or
 20 restricted the ability of their employees to take rest periods. *Brinker Restaurant Corp. v.*
 21 *Superior Court (Hohnbaum)*, 53 Cal.4th 1004 (2012).

22 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

23 Plaintiff's causes of action are barred, in whole or in part, because Defendants
 24 have at all times acted reasonably and in good faith with respect to its obligations under
 25 Labor Code § 226 to make, keep, and preserve adequate and accurate records of
 26 covered employees and the wages, hours, and other conditions and practices of
 27 employment, and Defendants' alleged bad acts or omissions, if any, were not knowing
 28 and not intentional.

1 **THIRTIETH AFFIRMATIVE DEFENSE**

2 Plaintiff's causes of action are barred, in whole or in part, because of Plaintiff's
3 own negligence and/or acts or omissions in connection with the matters alleged.

4 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

5 Plaintiff's causes of action are barred, in whole or in part, because of the
6 negligence and/or acts or omissions of parties other than the Defendants in connection
7 with the matters alleged.

8 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's causes of action are barred, in whole or in part, because Plaintiff's
10 damages, if any, were proximately caused by and/or were contributed to by Plaintiff's
11 own acts or failures to act and that Plaintiff's recovery, if any, should be reduced by an
12 amount proportionate to the amount by which said acts caused or contributed to said
13 alleged injury or damages.

14 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

15 Plaintiff's causes of action are barred, in whole or in part, because Plaintiff's
16 damages, if any, were proximately caused by and/or were contributed to by acts or
17 failures to act of persons other than Defendants, which acts or failures to act constitute
18 an intervening and superseding cause of the damages alleged in the Complaint.

19 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

20 Plaintiff's causes of action are barred, in whole or in part, because the actions
21 taken by Defendants were the exercise of reasonable business judgment.

22 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

23 Plaintiff's causes of action are preempted by Section 301 of the Labor
24 Management Relations Act, as amended, 29 U.S.C. section 185(a), to the extent
25 Plaintiff's claims require interpretation of the collective bargaining agreement between
26 Plaintiff's union and her employer.

27 ///

28 ///

1 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

2 Plaintiff's causes of action are barred, in whole or in part, because the sole and
3 exclusive remedy for the allegations therein are the grievance and arbitration procedures
4 set forth in the collective bargaining agreement between Plaintiff's union and her
5 employer.

6 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

7 Plaintiff's cause of action under the Labor Code Private Attorneys General Act is
8 barred because Plaintiff has failed to give timely and sufficient notice of the alleged
9 statutory violations to the California Labor and Workforce Development Agency and to
10 Defendants, as required by California Labor Code § 2699.

11 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff's cause of action under the Labor Code Private Attorneys General Act,
13 Cal. Labor Code §§ 2698, *et seq.*, is barred because Plaintiff has failed to identify any
14 other allegedly "aggrieved employees," as required by that statute.

15 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

16 Plaintiff has failed to state a claim against Defendants for punitive and/or
17 exemplary damages. See Cal. Civ. Code § 3294.

18 **FORTIETH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims for punitive and/or exemplary damages violate the due process
20 clauses of the Fifth and Fourteenth Amendments to the United States Constitution, as
21 well as the California Constitution and related California statutory and common law, to the
22 extent that the amount of such damages is disproportional to the actual damages sought,
23 and to the extent that neither statutory law, common law, nor the California Code of Civil
24 Procedure afford Defendants adequate procedural safeguards in light of the potential
25 punishment at stake.

26 **FORTY-FIRST AFFIRMATIVE DEFENSE**

27 Plaintiff's causes of action are barred, in whole or in part, because the employment
28 actions about which Plaintiff complains, if any, were based on good, sufficient, and legal

1 cause, upon reasonable grounds for belief in their truth or justification, and were taken in
2 good faith and without malice.

3 **FORTY-SECOND AFFIRMATIVE DEFENSE**

4 Plaintiff's causes of action are barred, in whole or in part, because she is not an
5 eligible employee for purposes of the California Family Rights Act. See 2 Cal.C.Reg. §
6 11087(e).

7 **FORTY-THIRD AFFIRMATIVE DEFENSE**

8 Plaintiff's causes of action are barred, in whole or in part, in that Section 510, 511,
9 and 514 of the California Labor Code renders inapplicable the Labor Code sections upon
10 which Plaintiff bases her overtime-related claims, to the extent that Plaintiff and similarly
11 situated employees worked on an alternative workweek schedule adopted pursuant to a
12 valid collective bargaining agreements that expressly provided for wages, hours of work,
13 and working conditions of the employees, premium wage rates for all overtime hours
14 worked, and a regular hourly rate of pay of not less than 30 percent more than the state
15 minimum wage.

16 **RESERVATION OF RIGHT**

17 Because Plaintiff's Complaint is vague, ambiguous and written in conclusory
18 terms, Defendants cannot fully anticipate all defenses that may be applicable to this
19 action. Accordingly, Defendants reserve the right to assert additional affirmative
20 defenses if Defendants become aware of the existence of such defenses after this
21 Answer is filed.

22 WHEREFORE, Defendants pray as follows:

- 23 1. That Plaintiff takes nothing by this action;
24 2. That judgment be entered in Defendants' favor;
25 3. That Defendants recover their costs in this proceeding, including
26 reasonable attorneys' fees; and

27 ///

28 ///

